

EXHIBIT 5

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	

**DECLARATION OF ELISSA A. WAGNER IN SUPPORT OF DEBTOR'S MOTION
FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191
OF UBS SECURITIES LLC AND UBS AG, LONDON BRANCH**

¹ The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



I, Elissa A. Wagner, declare as follows:

1. I am an attorney with the law firm of Pachulski Stang Ziehl & Jones LLP (“PSZJ”), counsel to Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”). I submit this declaration in support of the *Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch*, filed concurrently herewith (the “Motion”). This declaration is based on my personal knowledge of the facts set forth herein and my review of the documents identified below.

2. Attached as **Exhibit 1** to the *Appendix of Exhibits in Support of Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the “Appendix”) is a true and correct copy, with exhibits, of Claim No. 190 filed by UBS Securities LLC in the Bankruptcy Case.

3. Attached as **Exhibit 2** to the Appendix is a true and correct copy, without exhibits, of the unredacted version of *UBS’s Omnibus Response to Objections to the UBS Proofs of Claim* [D.E. 1133] (the “UBS Response”). The unredacted version of the UBS Response was provided to PSZJ by counsel for UBS Securities LLC and UBS AG, London Branch (collectively, “UBS”) on or about September 26, 2020. Exhibit 2 and certain other documents are the subject of the *Debtor’s Motion for Leave to File Certain Documents Under Seal in Connection with Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the “Motion to Seal”).

4. Attached as **Exhibit 3** to the Appendix is a true and correct copy, without exhibits, of the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [D.E. 488].

5. Attached as **Exhibit 4** to the Appendix is a true and correct copy of the *Order Denying UBS's Motion for Relief from the Automatic Stay to Proceed with State Court Action* [D.E. 765].

6. Attached as **Exhibit 5** to the Appendix is a true and correct copy of the *Judgment* entered in favor of the Debtor on February 22, 2010 in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) [NY D.E. 84].

7. Attached as **Exhibit 6** to the Appendix is a true and correct copy of a February 18, 2010 decision of the Appellate Division, First Department, of the Supreme Court of the State of New York (the "Appellate Division") reported at *UBS v. Highland Capital Mgmt., L.P.*, 2010 NY Slip Op 1436 (N.Y. App. Div.).

8. Attached as **Exhibit 7** to the Appendix is a true and correct copy of a July 21, 2011 decision of the Appellate Division reported at *UBS v. Highland Capital Mgmt., L.P.*, 86 A.D.3d 469 (N.Y. App. Div. 2011).

9. Attached as **Exhibit 8** to the Appendix is a true and correct copy of a March 13, 2012 decision of the Appellate Division reported at *UBS v. Highland Capital Mgmt., L.P.*, 93 A.D.3d 489 (N.Y. App. Div. 2012).

10. Attached as **Exhibit 9** to the Appendix is a true and correct copy of a March 15, 2018 decision of the Appellate Division reported at *UBS v. Highland Capital Mgmt., L.P.*, 159 A.D.3d 512 (N.Y. App. Div. 2018).

11. Attached as **Exhibit 10** to the Appendix is a true and correct copy of a document filed on August 7, 2020 in the Bankruptcy Case [D.E. 933-13], which UBS identified, at page 9 of the UBS Response, as its June 28, 2010 complaint against the Debtor in *UBS v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.).

12. Attached as **Exhibit 11** to the Appendix is a true and correct copy of the unredacted version of a document filed under seal on August 13, 2020 [D.E. 953-6] by the

Redeemer Committee of the Highland Crusader Funds (the “Redeemer Committee”), which UBS identified, at pages 10-11 of the UBS Response, as the June 17, 2015 settlement agreement between UBS, Highland Crusader Offshore Partners, L.P., and Highland Crusader Holding Corporation. The unredacted version of D.E. 953-6 was provided to PSZJ by counsel for the Redeemer Committee on or about August 13, 2020. Exhibit 11 and certain other documents are the subject of the Motion to Seal.

13. Attached as **Exhibit 12** to the Appendix is a true and correct copy of the unredacted version of a document filed under seal on August 13, 2020 [D.E. 953-9] by the Redeemer Committee, which UBS identified, at page 10 of the UBS Response, as the June 11, 2015 settlement agreement between UBS and Highland Credit Strategies Master Fund, L.P. The unredacted version of D.E. 953-9 was provided to PSZJ by counsel for the Redeemer Committee on or about August 13, 2020. Exhibit 12 and certain other documents are the subject of the Motion to Seal.

14. Attached as **Exhibit 13** to the Appendix is a true and correct excerpt from Exhibit 18 to the UBS Response, the *Defendants’ Memorandum of Law in Opposition to Plaintiffs’ Omnibus Motion in Limine* filed on June 13, 2017 in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.). UBS filed Exhibit 18 to the UBS Response under seal in the Bankruptcy Case on October 6, 2020 [D.E. 1133-12]. UBS’s counsel provided an unredacted version of D.E. 1133-12 to PSZJ on or about September 26, 2020.

15. Attached as **Exhibit 14** to the Appendix is a true and correct copy of the unredacted version of Exhibit 35 to the UBS Response, which UBS identified, at page 27 of the UBS Response, as a June 2015 email chain between counsel for UBS and counsel for Highland Credit Strategies Master Fund, L.P. UBS filed Exhibit 35 to the UBS Response under seal in the Bankruptcy Case on October 6, 2020 [D.E. 1133-22]. UBS’s counsel provided an unredacted

version of D.E. 1133-22 to PSJZ on or about September 26, 2020. Exhibit 14 and certain other documents are the subject of the Motion to Seal.

16. Attached as **Exhibit 15** to the Appendix is a true and correct copy of the unredacted version of Exhibit 34 to the UBS Response, which UBS identified, at pages 27-28 of the UBS Response, as a June 2015 email chain between counsel for UBS and counsel for the Redeemer Committee, on behalf of Highland Crusader Offshore Partners, L.P. and Highland Crusader Holding Corporation. UBS filed Exhibit 34 to the UBS Response under seal in the Bankruptcy Case on October 6, 2020 [D.E. 1133-21]. UBS's counsel provided the unredacted version of D.E. 1133-21 to PSJZ on or about September 26, 2020. Exhibit 15 and certain other documents are the subject of the Motion to Seal.

17. Attached as **Exhibit 16** to the Appendix is a true and correct excerpt from the unredacted version of Exhibit 6 to the UBS Response, which UBS identified in the UBS Response as the March 8, 2013 report of one of UBS's expert witnesses in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.). UBS filed Exhibit 6 to the UBS Response under seal in the Bankruptcy Case on October 6, 2020 [D.E. 1133-5]. UBS's counsel provided the unredacted version of D.E. 1133-5 to PSJZ on or about September 26, 2020. Exhibit 16 and certain other documents are the subject of the Motion to Seal.

18. Attached as **Exhibit 17** to the Appendix is a true and correct excerpt from the *Plaintiffs' Pre-Trial Brief in Support of Bifurcation of Trial* filed by UBS on April 18, 2018 in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) [NY D.E. 472].

19. Attached as **Exhibit 18** to the Appendix is a true and correct excerpt from the transcript of a May 1, 2018 hearing in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) [NY D.E. 494].

20. Attached as **Exhibit 19** to the Appendix is a true and correct excerpt from the transcript of the October 6, 2020 status conference in the Bankruptcy Case [D.E. 1145].

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 16, 2020 at Scottsdale, Arizona.

/s/ Elissa A. Wagner

Elissa A. Wagner